

REMARKS*1. Status of claims*

After entry of the above amendment, claims 1-33, 35, and 37 are pending.

2. Support for amendment

The above amendment finds support at p. 3, lines 22-24; p. 7, lines 27-30; p. 8, lines 6-8; p. 9, lines 21-24; and Figs. 2A-2C. No new matter has been added by this amendment.

3. Claim rejections under 35 U.S.C. §102

The Examiner rejected claims 1-4, 6, 9-11, 13-14, 16, 18-20, 22-25, and 29-33 under 35 U.S.C. §102(e) as being anticipated by Michelson, US 6,537,320 ("Michelson"). In light of the above amendment, Applicants request this rejection be withdrawn.

Michelson is directed to a spinal fusion implant which is secured in two adjacent vertebrae and has a passage therethrough to promote fusion of the vertebrae (Abstract; col. 1, lines 21-24; col. 2, lines 61-63). In the present application, claims 1, 11, 19, and all claims dependent thereon, as amended, recite an apparatus or a method in which fusion of vertebrae does not occur. Michelson teaches the opposite of this limitation, namely, the fusion of vertebrae does occur. Therefore, Michelson fails to teach every element of the present claims, and therefore it cannot anticipate them. Applicants request this rejection of claims 1-4, 6, 9-11, 13-14, 16, 18-20, 22-25, and 29-33 be withdrawn.

4. *Claim rejections under 35 U.S.C. §103*

The Examiner rejected claims 5, 7-8, 12, 15, 17, 21, 26-28, 35, and 37 under 35 U.S.C. §103(a) as being unpatentable over Michelson in view of Boyce *et al.*, US 6,294,187 ("Boyce"). In light of the above amendment, Applicants request this rejection be withdrawn.

Michelson has been described above. Boyce is directed to a load-bearing osteoimplant comprising a shaped, compressed composition of bone particles (Abstract). Boyce states the osteoimplant promotes new bone formation within and around the implant (Summary of the Invention).

The skilled artisan considering the teachings of Michelson and Boyce would take note of their teachings regarding spinal fusion and bone growth. A combination of the teachings of the references would guide the skilled artisan to apparatuses and methods directed to fusion of vertebrae. The references, alone or in combination, would not guide the skilled artisan to apparatuses and methods in which fusion of vertebrae does not occur. Therefore, the claimed invention as a whole is patentable over Michelson and Boyce, and Applicants request this rejection of claims 5, 7-8, 12, 15, 17, 21, 26-28, 35, and 37 be withdrawn.

5. *Conclusion*

After entry of the above amendment, Applicants submit all pending claims 1-33, 35, and 37 are in condition for allowance. The Examiner is invited to contact the undersigned agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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